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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-82

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,
Petitioner,

v.

BEN CARTER, *Respondent.*

RESPONDENT'S BRIEF TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA AND TO THE SUPREME COURT OF THE STATE OF GEORGIA

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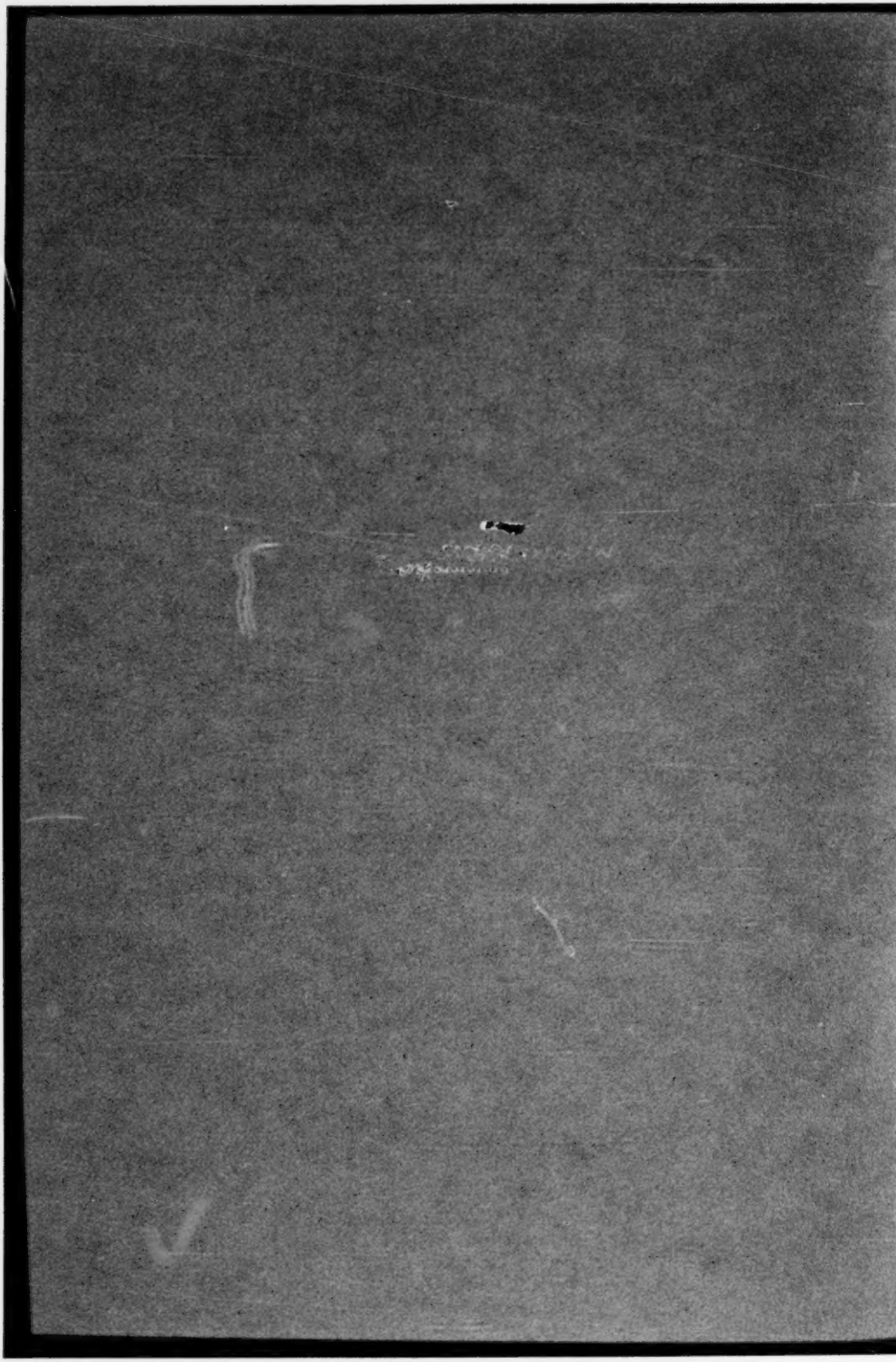

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Respondent, Ben Carter, respectfully prays unto the Court that this Court deny the petition for writ of certiorari by the petitioner to review the decision of April 16, 1975, of the Supreme Court of Georgia, denying a petition for a writ of certiorari to review the decision of the Georgia Court of Appeals, and to review the decision of the Court of Appeals.

QUESTION PRESENTED

1. Whether or not the National Labor Relations Act pre-empts State jurisdiction in an action based upon a tort conspiracy brought by an employee against a labor union and its local.

ARGUMENT

The decision of the Court below that petitioner seeks to reverse is controlled by the principles stated in *Vaca* v. *Sipes,* 386 U.S. 171 (1967) and *Linn* v. *United Plant Guard Workers of America, Local 114,* 383 U.S. 53 (1966). In *San Diego Building Trade Council* v. *Garmon,* 359 U.S. 236 (1959), there is set out the general doctrine of NLRB pre-emption in the field of labor law. The decisions in *Vaca* and *Linn* clearly define and represent the present status of the legally recognized exceptions to the broad doctrine of pre-emption enunciated in *Garmon.*

The doctrine of federal pre-emption as defined in *Garmon* is basically that where the activity involved is "arguably protected" by § 7 of the National Labor Relations Act or constitutes an unfair labor practice under § 8 of the Act, then the doctrine of pre-emption should apply, to wit:

> When it is clear or may be fairly assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that the state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the

> States have acted through laws of broad general application rather than laws specifically directed toward the governance of industrial relation. Regardless of the mode adopted, to allow the State to control conduct, which is the subject of national regulation, would create potential frustrations of national purposes. 359 U.S. 236, at 244.

However, while recognizing the above as a correct statement of the principle of pre-emption, there are, nonetheless numerous exceptions to this doctrine. *Smith* v. *Evening News Association,* 371 U.S. 195 (1962); *Carey* v. *Wesinghouse Electric Corporation,* 375 U.S. 261, 272 (1964); *Vaca* v. *Sipes,* 386 U.S. 171 (1967); *United Construction Workers, etc.* v. *Laburnum Construction Corporation,* 347 U.S. 656 (1954); *International Union, United Automobile, etc. Workers* v. *Russell,* 356 U.S. 634 (1958); *Linn* v. *United Plant Guard Workers,* 383 U.S. 53 (1966); *International Association of Machinists* v. *Gonzales,* 356 U.S. 617 (1958).

The exceptions to the doctrine of pre-emption involve a variety of factual situations and no two cases appear to involve identical or substantially similar, factual situations or relationships. This Court has in the past expressed concern over the problem of balancing the federal pre-emption doctrine against the availability of state court jurisdiction.

In *Vaca* v. *Sipes,* 386 U.S. 180, the Supreme Court commented:

> . . . While these exceptions in no way undermine the vitality of the pre-emption rule where applicable, they demonstrate that the decision to pre-empt federal and state court jurisdiction over a given class of cases must depend upon the nature

> of the particular interests being asserted and the effect upon the administration of national labor policies of concurrent judicial and administrative remedies. 386 U.S. 180, at 180.

There do not appear to be any cases wherein a Court could clearly apply a definite, fixed standard in ruling on the issue of preemption. The standard or rule, at the most, appears to be a nebulous one. This Court has held the doctrine of pre-emption does not apply in cases "where the activity regulated was merely a peripheral concern of the Labor Management Relations Act". Nor does it apply in cases where the activity touches "interests so deeply rooted in local feeling and responsibility". In such latter instances the court has held that in the "absence of compelling congressional direction" this Court could not infer that Congress had deprived the States of the power to act. *Vaca* v. *Sipes,* 386 U.S. 171, at 180.

The respondent, Ben Carter, is not a member of the petitioner's union nor of its local. The employer or employers involved are not a party to this action. Respondent simply maintains that the petitioner and its local conspired together to deprive him of his employment. It cannot be denied that conceivably some of the facts alleged may constitute an unfair labor practice. However, this in and of itself should not demand pre-emption. The overall thrust of respondent's complaint is an action based on common law conspiracy wherein he sues for actual damages, punitive damages and attorney's fees. Basically stated, the action is one involving a willful and malicious tort.

The case of *Linn* v. *United Plant Guard Workers,* 383 U.S. 53 (1966) is analogous to the instant case.

In *Linn,* this Court held that an action by a company manager against a union and others for damages for alleged defamation in the court of a labor campaign was not pre-empted and therefore the claimant in that case could pursue his claim for damages under state law. In *Linn* this Court stated:

> In light of these considerations it appears that the exercise of state jurisdiction here would be a "merely peripheral concern of the Labor Management Relations Act", provided it is limited to redressing libel issued with knowledge of its falsity, or with reckless disregard of whether it was true or false. Moreover, we believe that "an overriding state interest" in protecting its residents from malicious libels should be recognized in these circumstances. . . . 383 U.S. 53, at 60.

In *Linn* this Court, after recognizing that the NLRB "could award no damages, impose no penalty or give any other relief to a defamed individual", concluded:

> On the contrary, State remedies have been designed to compensate the victim and enable him to vindicate his reputation. The Board's lack of concern with the "personal" injury caused by the malicious libel with its inability to provide redress the maligned party, vitiates the ordinary argument or pre-emption . 383 U.S. 53, at 63.

The decision of the Court below is merely a decision following the rule set out in *Linn.* Even though the cause of action in *Linn* and the cause of action in the instant case involved different factual situations, the rule of *Linn* should, nonetheless, apply. The employer is not a party to this action. The respondent is not even a member of the petitioner's union. Respondent is a non-union laborer and the complaint is one under

state law for damages. The decision below does not adversely affect or undermine the broad federal scheme of this country's labor management relationships and policies.

CONCLUSION

The National Labor Relations Act does not pre-empt state jurisdiction in an action based upon a tort conspiracy brought by a non-union member-employee against a labor union and its local.

Respectfully submitted,

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September 19, 1975